

37 Am. Jur. 2d Fraud and Deceit § 82

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

4. Commendatory Trade Talk; Promotion and “Puffery”

§ 82. Applications of rule and exceptions

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Some of the statements to which the general rule of nonresponsibility for commendatory language has been applied are:

- “best price” claims¹
- representations as to the advantages of a purchase²
- statements as to the status of a particular product in comparison with competitor’s products, or as an innovation in the industry³
- a statement that consumers will receive “all the advantages that only the nation’s largest wireless company can provide”⁴
- statements regarding computer software or hardware to the effect that the use of the product will improve business operations or profitability⁵ or keep the consumer “up to date”⁶
- statements that the product is of the “highest quality”⁷ or is “mechanically fine,” “mechanically sound,” and in “good shape”⁸
- statements by a broker’s agent as to the advantages of consigning merchandise to the broker for sale⁹
- representations made by the seller of a business or agency to the buyer concerning the agency’s goodwill and good customer relations¹⁰

Observation:

Purported misrepresentations that are conclusory may be deemed to constitute mere puffery where they are contradicted by the written agreement between the parties.¹¹

Footnotes

- ¹ Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009).
- ² Midwest Printing, Inc. v. AM Intern., Inc., 108 F.3d 168, 32 U.C.C. Rep. Serv. 2d 134 (8th Cir. 1997) (applying Missouri law); Griffin v. H. L. Peterson Co., 427 S.W.2d 140 (Tex. Civ. App. Dallas 1968).
- ³ All-Tech Telecom, Inc. v. Amway Corp., 174 F.3d 862, 38 U.C.C. Rep. Serv. 2d 88 (7th Cir. 1999) (statement that product was “the best”); Midwest Printing, Inc. v. AM Intern., Inc., 108 F.3d 168, 32 U.C.C. Rep. Serv. 2d 134 (8th Cir. 1997) (applying Missouri law); Huddleston v. Infertility Center of America, Inc., 700 A.2d 453 (Pa. Super. Ct. 1997).
- ⁴ Shroyer v. New Cingular Wireless Services, Inc., 622 F.3d 1035 (9th Cir. 2010).
- ⁵ Scheduled Airlines Traffic Offices, Inc. v. Objective Inc., 180 F.3d 583 (4th Cir. 1999) (applying Virginia law).
- ⁶ Peerless Wall and Window Coverings, Inc. v. Synchronics, Inc., 85 F. Supp. 2d 519, 41 U.C.C. Rep. Serv. 2d 462 (W.D. Pa. 2000), order aff’d, 234 F.3d 1265 (3d Cir. 2000).
- ⁷ Serbalik v. General Motors Corp., 246 A.D.2d 724, 667 N.Y.S.2d 503 (3d Dep’t 1998); Tate v. Colony House Builders, Inc., 257 Va. 78, 508 S.E.2d 597 (1999).
A motion picture distributor’s representations to a film exhibitor concerning the quality of a film it was scheduled to release are merely dealers’ talk or puffery. Presidio Enterprises, Inc. v. Warner Bros. Distributing Corp., 784 F.2d 674 (5th Cir. 1986).
- ⁸ Russell v. Wilson, 991 So. 2d 745 (Ala. Civ. App. 2008).
- ⁹ Atlantic Nat. Bank of Boston v. Korrick, 29 Ariz. 468, 242 P. 1009, 43 A.L.R. 1184 (1926).
- ¹⁰ Dyer v. Caldcleugh and Powers, 392 S.W.2d 523 (Tex. Civ. App. Corpus Christi 1965), writ refused n.r.e., (Jan. 26, 1966).
- ¹¹ Sheth v. New York Life Ins. Co., 273 A.D.2d 72, 709 N.Y.S.2d 74 (1st Dep’t 2000).

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